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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,913	02/27/2002	Andrew Stoll	2002082-0002	6358

24280 7590 09/11/2003

Choate, Hall & Stewart  
Exchange Place  
53 State Street  
Boston, MA 02109

EXAMINER
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SPIVACK, PHYLLIS G

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 09/11/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
10/083,913

Applicant(s)  
Stoll

Examiner  
Phyllis G. Spivack

Art Unit  
1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-27 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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*Election/Restriction*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9, 21 and 22, drawn to methods of treating unipolar major depression comprising administering an omega-3 fatty acid, and a kit comprising an omega-3 fatty acid with a psychotropic medication, classified in class 514, subclass 558.
- II. Claims 10-20 and 23-27, drawn to an omega-3 phosphatidylcholine consisting of glycerol, wherein the  $\alpha$  and  $\beta$  carbons of said glycerol are both esterified to a fatty acid, at least one of which is an omega-3 fatty acid, and the  $\gamma$  carbon of said glycerol is esterified to phosphocholine, pharmaceutical compositions thereof and a kit comprising an omega-3 phosphatidyl-choline with a psychotropic medication, classified in various subclasses of class 554.

The inventions are distinct, each from the other, for the following reasons:

The Groups have acquired a separate status in the art as shown by their different classification and their recognized, divergent subject matter. The searches required for each Group are not co-extensive. Each Group is capable of supporting a separate patent. Thus restriction for examination purposes, as indicated, is proper.

Further, claims 21-27 are generic to a plurality of disclosed patentably distinct species comprising a psychotropic agent, as disclosed in the subject specification. Applicant is required

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under 35 U.S.C. 121 to elect a single disclosed species of a psychotropic agent, even though this requirement is traversed.

Should Applicant traverse on the ground that the species are not patentably distinct, Applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the Examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that to be complete, the reply to this requirement must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).

Any inquiry concerning this communication should be directed to Phyllis Spivack at telephone number 703-308-4703.

September 9, 2003

*Phyllis Spivack*

**PHYLLIS SPIVACK  
PRIMARY EXAMINER**